THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.16259 OF 2005

ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

The petitioners herein who are the Government of Andhra Pradesh, represented by its Secretary to Government and the Director of Economics and Statistics, Khairatabad, Hyderabad filed this writ petition seeking for certiorari assailing the orders in O.A.No.109 of 2004 dated 20-4-2005 on the file of the A.P. Administrative Tribunal, Hyderabad, allowing the application filed by the respondent herein under Section 19 of the Administrative Tribunals Act, 1985 wherein he challenged the impugned memo dated 11-4-2001, rejecting his claim for regularization of services in the post of Junior Taluk Statistical Assistant from the date of his initial appointment i.e., 17-4-1968.

Heard the learned Government Pleader for services-II and Smt. Ch.Sujatha, learned counsel for the contesting respondent.

The facts of the case are that the respondent herein is claiming that he was initially appointed as Taluk Statistical Assistant which is now called as Assistant Statistical Officer under the A.P. Economic and Statistical Sub-ordinate Services and joined duty on 17-4-1968. Subsequently, he was transferred and posted as Junior Investigator (now Assistant Statistical Officer) once again on 23-10-1969 and therefore, he made a representation to the concerned authorities for fixing his seniority from the date of his initial appointment as Taluk Statistical Assistant i.e., from 17-4-1968. However, the same was rejected on the ground that his services rendered in the post of Taluk Statistical Assistant cannot be counted for regulating his services in the post of Junior Investigator as these two posts are not identical even though they carry the same pay scale. Hence, he approached the Tribunal by way of application which was filed on 30-12-2003 and numbered as O.A.No.109 of 2004.

After notice and appearance, the claim of the respondent was contested by filing a counter-affidavit pointing out that no doubt he was appointed as Temporary Taluka Statistical Assistant initially under

emergency conditions on 17-4-1968 under Rule 10(a) (i) of the then A.P. State and Sub-ordinate Service Rules and later, he was relieved from the post on 3-8-1968 afternoon for want of vacancy. Even once again, he was appointed as Taluka Statistical Assistant temporarily under the emergency conditions and posted at Kuppam Taluk Office, Chittoor. However, he was relieved once again from the said post on 9-10-1969. Later, he was appointed as a temporary Taluka Statistical Assistant at Kuppam and joined on 23-10-1969 forenoon. Therefore, such break up service of respondent cannot be counted for any purpose and he cannot make any claim for such regularization of the seniority for such service. Further it was also pointed out that as the order impugned has been passed on 20-4-2005, the present application filed by the respondent is hopelessly barred and suffer from serious latches. Hence the same is liable to be rejected.

On consideration of the submissions made on either side, and by taking into consideration the principles laid down in Direct recruit Class-II Engineering Officers' Association Vs. State of Maharashtra and others reported in (1990) 2 SCC 715 and also the decision of the Tribunal in O.A.No.2248 of 2003 dated 26-8-2003 and placing a reliance on Rules covering the Economics and Statistical Subordinate Service Rules issued in G.O.216 dated 2-3-1959, it was held that the transferring the applicant from one post to another under the pretext of terminating the applicant's service for want of vacancy and then reappointing immediately and again terminating, etc., cannot be a ground for denying the seniority and regularization of the services of the applicant from the date of his initial appointment. Therefore, the respondent's appointment cannot be said to be contra to the said procedure and therefore, in view of the principles laid down in the aforesaid decisions, the respondent would be entitled to the regularization of services inspite of the break and consequently for fixing of seniority with all the benefits permissible under law. Having aggrieved by the same, the present writ petition is filed.

The learned Government pleader for services-II appearing on behalf of the petitioners strenuously, contended that basically, the tribunal ought to have rejected the very application which is filed beyond the period of limitation as prescribed under the Provisions of A.P.Tribunal, Act itself since

the impugned order was passed on 11.4.2001 and the present application was filed on 30-12-2003 and as such, there is no justification for showing any such indulgence and hence, the application should have been dismissed. Even otherwise, it is contended that he was being appointed and relieved again and appointed, there is a clear cut break and no continuity of service and the respondent having accepted such termination and rejoined the service cannot claim any such continuation of service.

Smt. Ch.Sujatha, the learned counsel appearing on behalf of the respondent contended that the petitioners having terminated the services of the respondent and reappointed him time and again, utilized his services continuously from the date of initial appointment and therefore, the tribunal has rightly taken into consideration such services from the date of initial appointment for the purpose of continuity of service.

In the light of the submissions made on either side and also a perusal of the material available on record, there is no dispute as to the chequered events in respect of the services of the respondent herein.

Respondent was initially appointed on 17-4-1968 temporarily on emergency conditions under Rule 10(a)(i), as Taluk Statistical Assistant. Later, he was relieved on 3-8-1968 for want of vacancy. He was again issued fresh appointment orders as Temporary Junior Investigator and posted at District Statistical Office, Chittoor and relieved from the said post on 9-10-1969 forenoon. Again he was issued orders appointing him as temporary Taluk Statistical Assistant, Kuppam, vide proceedings No.24759/DO/D2/69 dated 8-10-1969 in which post he joined on 23-10-1969 forenoon, from which date, he has been regularly working in the said service. This appointment is nothing but an out come of a regular vacancy and as such, he is being continued and his services were regularized with effect from 23-10-1969.

Apart from that, on the face of it, it amply makes it clear that the earlier service, which is purely a temporary in nature, would not confer any right to the respondent so as to claim any continuity of service etc. Even otherwise, the claim of the respondent seeking for such regularization from 17-4-1968 was negative as long back as on 12-4-2001 and that even though it was stated in the application filed before the Tribunal that he had made writ

petition immediately as against the said orders and the same is under consideration. However, the fact remains that no persuasion has been made by the respondent herein in respect of such grievance, as the present O.A. which has been filed on 30-12-2003 was numbered in the year 2004. On the face of it, the O.A. itself has been filed beyond the period of limitation as prescribed under the provisions of the Andhra Pradesh Tribunal Act and no explanation is forthcoming in this regard.

In the above facts and circumstances of the case, we are of the view that the very O.A. filed by the respondent herein is bared by limitation and the same is liable to be rejected.

But, at this stage, it is curious to note that the earlier short term appointments and the terminations have not been challenged by the respondent either before the tribunal or before this Court and consequently, the earlier orders as to the appointments and the terminations, remained unchallenged. Therefore, the silence on the part of the respondent in this regard amounts to accepting the earlier orders as to the appointments and the terminations and as such, he cannot lay his claim by way of this O.A.

In view of the aforesaid reasons, We are of the view that the tribunal is not justified in allowing the claim as sought by the respondent and therefore, the same is liable to be set aside.

Accordingly, the writ petition is allowed and the order of the tribunal in O.A.109/2004 is set aside.

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B.PRAKASH RAO,J

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RAMESH RANGANATHAN,J

Dated 27-09-2006

Dvs

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WRIT PETITION NO.16259 OF 2005

(Judgment delivered by the Hon'ble Sri Justice B. Prakash Rao)

Dated 27-09-2006